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No. 83-1163

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BOLAR PHARMACEUTICAL CO., INC.,

Petitioner,

VS.

CIBA-GEIGY CORPORATION,

Respondent.

BRIEF OF THE NATIONAL ASSOCIATION OF PHARMACEUTICAL MANUFACTURERS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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The National Association of Pharmaceutical Manufacturers, Inc., ("NAPM") respectfully submits this brief as amicus curiae in support of the petition for a writ of certiorari by Bolar Pharmaceutical Co., Inc. ("Bolar") in the above-entitled matter. Pursuant to Supreme Court Rule 36.1, NAPM has obtained written consent for the filing of its amicus brief from the respective parties to the instant petition. A copy of said consent is annexed hereto at Addendum 1.

QUESTIONS PRESENTED

NAPM concurs in the questions presented in Bolar's petition for a writ of certiorari.

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INTEREST OF THE AMICUS CURIAE

NAPM is a national trade association representing more than 100 manufacturers and distributors of prescription and "over-the-counter" pharmaceutical products.[1] For many years, NAPM has been the leading spokesperson for what is commonly known as the generic drug industry. NAPM has represented the industry in the courts (both as a party and as amicus), before administrative tribunals and in hearings before Congress and the legislatures of numerous states. NAPM previously participated as an amicus below before the Court of Appeals for the Third Circuit in the instant case and has been amicus curiae before this Court regarding the issues presented for review herein. *See InwoodLaboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844 (1982) (hereinafter "*Ives*").

THE SIGNIFICANCE OF THE ISSUES PRESENTED

It is respectfully submitted that the questions presented to this Court are not limited to the particular drug at issue. Rather, this Court's decision will have a significant and far-reaching impact on the entire drug industry and the manner in which drugs are prescribed to and used by the American public. The decision sought to be reviewed herein undermines the rule of law established by a unanimous Court in *Ives* and squarely presents the issue as to the appropriate standard for contributory liability under the Lanham Act, 15 U.S.C. §1051 *et seq.*, which Justice White raised in his concurring opinion in *Ives*.

Traditionally, generic drug products have been marketed in the same color as their well-known brand name counterparts. In recent years, however, brand name companies have undertaken a vigorous litigation effort to halt this long-standing practice. In a series of cases decided by the Court of Appeals for the Third Circuit and the District Court for the District of New Jersey,[2] the brand name companies were successful in advancing their revisionist view of the role of color in prescription

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[1]Petitioner Bolar is not a member of NAPM.

[2]*See American Home Products Corp. v. Chelsea Laboratories*, F.Supp. , Civ. Action No. 81-3351 (VPB) (D.N.J. Aug. 5, 1982), *aff'd without opinion*, F.2d. , No. , (3d Cir., Sept. 29, 1983); *Biocraft* (cont.)

pharmaceuticals. In an essentially contemporaneous case arising out of the District Court for the Eastern District of New York, a comprehensive decision affirmed the traditional view – a finding which was ultimately sustained by this Court. *Ives Laboratories, Inc. v. Darby Drug Co., Inc.*, 488 F.Supp. 394 (E.D.N.Y. 1980), *rev'd*, 638 F.2d 538 (2d Cir. 1981), *rev'd sub nom., Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844 (1982), *aff'd sub nom. on remand, Ives Laboratories, Inc. v. Darby Drug Co., Inc.*, 697 F.2d 291 (2d Cir. 1982) (opinion not published per Second Circuit Rule 0.23).

As the instant case shows, the Third Circuit and the District of New Jersey nevertheless continue to grant monopoly color rights to brand name companies. NAPM submits this brief since, as this Court recognized in *Ives*, it is legally and scientifically indisputable that color plays a vital role in patient acceptance and utilization of prescription drugs. *See Ives*, 456 U.S. at 852, n.20 and 456 U.S. at 862-863 and n.3 (White, J., concurring). The decision below totally misconstrues the legal effect of the decision in *Ives* by disregarding this Court's complete rejection of the "reasonably anticipate" standard as a basis for contributory liability under the Lanham Act and its recognition of similarity of capsule color as a legitimate competitive use. The public interest requires that this Court reverse the decision of the Third Circuit to insure that patients for whom lower-cost generic products are prescribed are not subjected to the penalty of confusion, anxiety, mistake and potential injury

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(cont.)

Laboratories, Inc. v. Merck & Co., 532 F. Supp. 1068 (D.N.J. 1980); *Boehringer Ingelheim G.m.b.H. v. Pharmadyne Laboratories*, 532 F.Supp. 1040 (D.N.J. 1980); *SK&F Co. v. Premo Pharmaceutical Laboratories, Inc.*, 481 F.Supp. 1184 (D.N.J. 1979), *aff'd*, 625 F.2d 1055 (3d Cir. 1980); *Hoffman LaRoche v. Premo Pharmaceutical Laboratories, Inc., 210 U.S.P.Q. 374 (D.N.J. 1980); Merrell-National Laboratories, Inc. v. Zenith Laboratories, Inc.*, 194 U.S.P.Q. 157 (D.N.J. 1977), *aff'd on procedural grounds*, 579 F.2d 786 (3d Cir. 1978). Additionally, numerous other cases have been filed in the District of New Jersey by virtually every brand-name company in order to enjoin the marketing of generic drug products in colors which are similar to their brand-name counterparts. *See e.g., Sandoz, Inc. v. Danbury Pharmacal, Inc.*, 83 Civ. 4771 (D.N.J.) (complaint filed Dec. 12, 1983); *Ciba-Geigy Corp. v. Zenith Laboratories, Inc., et al.*, 82 Civ. 671 (D.N.J.) (complaint filed March 4, 1982).

resulting from a judicially imposed requirement of color differentiation between generic and brand name drugs.

REASONS FOR GRANTING THE WRIT

I.

A WRIT OF CERTIORARI SHOULD ISSUE TO REJECT THE LOWER COURT'S DEVIATION FROM THE STANDARD OF CONTRIBUTORY LIABILITY SET FORTH BY THIS COURT IN IVES

The Third Circuit and the District of New Jersey applied a standard of contributory liability which was expressly rejected by this Court. Under the standard applied, Bolar was enjoined from manufacturing a generic drug product in the same color as its brand-name counterpart, under the theory that it could "reasonably anticipate" that some pharmacists might unlawfully substitute its product for Ciba-Geigy's or commit other acts of so-called unfair competition. The supposed rationale for such liability is that color similarity between generic and brand-name drugs makes it easier for such illegal acts to occur.

In *Ives*, however, the test for determining contributory liability was reaffirmed as follows:

> As the lower courts correctly discerned, liability for trademark infringement can extend beyond those who actually mislabel goods with the mark of another. Even if a manufacturer does not directly control others in the chain of distribution, it can be held responsible for their infringing activities under certain circumstances. Thus, if a manufacturer or distributor *intentionally induces* another to infringe a trademark, or if it *continues to supply its product to one whom it knows or has reason to know* is engaging in trademark infringement, the manufacturer or distributor is contributorially responsible for any harm done as a result of the deceit. See *William R. Warner & Co., v. Eli Lilly & Co.*, supra; *Coca-Cola Co. v. Snow Crest Beverages, Inc.*, supra.

Ives, 456 U.S. at 853-854 (footnote omitted) (emphasis added).

In contrast to the "intent" requirement for contributory liability as established by *Ives*, the so-called "reasonably anticipate" standard holds a manufacturer *per se* contributorily liable merely because it may anticipate that some unknown number of pharmacists, to an unknown extent, might illegally substitute the generic prescription drug product for its brand name prescription equivalent, or commit certain other unspecified unfair competitive acts, and that color similarity might facilitate such acts.

Prior to *Ives*, the "reasonable anticipation" standard was utilized by the Third Circuit to find contributory liability by a generic drug manufacturer. *SK&F Co. v. Premo Pharmaceutical Laboratories*, 625 F.2d 1055, 1065-66 (3d Cir. 1980) (hereinafter "*SK&F*"). Subsequent to *Ives*, the Third Circuit has continued to apply the "reasonably anticipate" standard to support a finding of contributory liability despite this Court's express rejection of it. In *Ives*, this Court observed:

> Justice White's concern [that we may have silently acquiesced in a change in the test for contributory infringement] is based on a comment by the Court of Appeals that the generic manufacturers 'could reasonably anticipate' illegal substitution of their drugs, 638 F.2d at 543. *If the Court of Appeals had relied upon that statement to define the controlling legal standard, the court indeed would have applied a 'watered down' and incorrect standard.* As we read the Court of Appeals' opinion, however, that statement was intended merely to buttress the court's conclusion that the legal test for contributory infringement, as earlier defined, had been met.[3]

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[3]The majority's decision thus comports with Justic White's statement that:

> [t]he mere fact that a generic drug company can anticipate that some illegal substitution will occur to some unspecified extent, and by some unknown pharmacists, should not by itself be a predicate for contributory liability.

Ives, 456 U.S. at 861 (White, J., concurring).

Ives, 456 U.S. at 854, n.13 (emphasis added).

In affirming the District of New Jersey's determination of contributory liability by Bolar, the Third Circuit attempted to distinguish *Ives* on the theory that the lower court's finding of Bolar's contributory liability could be premised upon state rather than federal law. The Court of Appeals thus stated it was not necessary to reach the question of whether *Ives* overruled *SK&F's* "reasonably anticipate" standard for contributory liability since:

> [t]he district court's conclusions regarding the New Jersey state law claims of 'passing off' and 'unprivileged imitation' are mandated by *SK&F's* and provide a sufficient independent basis for affirming the district court's grant of preliminary injunctive relief.

Ciba-Geigy Corp. v. Bolar Pharmaceutical Co., Inc., 719 F.2d 56, 57 n.1 (3d Cir. 1983)

In the first instance, the Third Circuit's reliance on *SK&F* raises the exact issue about which Justice White had expressed concern in *Ives*. More significantly, the Third Circuit's purported distinction between state unfair competition law and federal trademark law with respect to the appropriate standard for contributory liability is erroneous.

An examination of the *SK&F* decision reveals that its finding that the generic manufacturer was contributorily liable for the New Jersey state tort of "passing off" was founded upon the "reasonably anticipate" standard. Indeed, the Third Circuit in *SK&F* stated:

> Moreover, it has been held that it is actionable conduct under New Jersey law for a drug manufacturer to put a product in the hands of a pharmacist in a form in which the manufacturer can *reasonably anticipate that it may be passed off as another product even if the manufacturer does nothing else to encourage passing off*. (citations omitted).

SK&F, 625 F.2d at 1062 (emphasis added).

Further, in concluding that *SK&F*'s showing that it was likely to succeed on its unfair competition claim under state law would therefore also support a finding of success under §43(a) of the Lanham Act, the *SK&F* court observed:

> Since, except for the interstate commerce requirement, the elements of the unfair competition torts proscribed by New Jersey law and by Section 43(a) of the Lanham Act *are the same*, we need not repeat the factual discussion as to likelihood of success on the merits of the federal cause of action.

Id. at 1066 (emphasis added).

Thus, it is clear that the "reasonably anticipate" standard which was applied in the instant case by the District Court and affirmed by the Third Circuit Court of Appeals to find contributory liability by Bolar, is the *same* standard which was used to find contributory liability in *SK&F* under the unfair competition law of the State of New Jersey, as well as the Lanham Act. *Compare SK&F*, 625 F.2d at 1062 with *Ciba-Geigy Corp. v. Bolar Pharmaceutical Co., Inc.*, 547 F.Supp. 1095, 1115-1116 (D.N.J. 1982). It is this standard which was explicitly repudiated by the Court in *Ives*.

The *Ives* Court adopted the far different articulation of contributory liability set forth in *Coca-Cola Co. v. Snow Crest Beverages, Inc.*, 64 F.Supp. 980 (D. Mass. 1946), *aff'd*, 162 F.2d 280 (1st Cir.) *cert. denied*, 332 U.S. 809 (1947). In *Snow Crest*, a single standard of contributory liability was established for both state unfair competition and federal trademark infringement. Therefore, the test for contributory liability for unfair competition under state law cannot be greater than the "intent" standard enunciated by this Court in trademark cases; a test which this Court recently characterized as "narrow". *Sony Corporation of America v. Universal City Studios*, No. 81-1687, 52 U.S.L.W. 4090, 4094, n.17 (Jan. 17, 1984). Otherwise, this Court's narrow interpretation of contributory liability would

be rendered meaningless since every action could be styled as one in state unfair competition rather than trademark infringement.

The Third Circuit's use of the reasonably anticipate standard also creates additional confusion as to the appropriate measure for contributory liability. Justice White observed that this confusion might exist unless the question presented to this court was resolved. *Ives*, 456 U.S. at 619-620 (White, J., concurring). The Third Circuit's resort to state law in order to distinguish *Ives* binds generic manufacturers to a standard of liability that is unsupported by case law. Moreover, the court's remedy – an injunction against the copying of a functional unpatented, trademarked, or copyrighted feature – violates this Court's express holding in *Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964) and *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964).

It is respectfully submitted that a writ of certiorari issue to reverse the Third Circuit's error in continuing to insist on applying a standard of contributory liability which is impermissible and in contravention of this Court's opinion in *Ives*.[4]

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[4]Alternatively, the Third Circuit affirmed the District Court finding that Bolar had intended to facilitate illegal substitution by its manufacture of generic drugs which utilized the same capsule colors as the brand-name product and was therefore liable even under this Court's standard for contributory passing off. No evidence of such an intent was identified by either the District Court or the Third Circuit other than the fact that the same color was used. Once again, this Court in *Ives* directly addressed and rejected this type of analysis:

> The Court of Appeals cited no evidence to support its conclusion, which apparently rests upon the assumption that a pharmacist who has been provided an imitative generic drug will be unable to resist the temptation to profit from illegal activity. We find no support in the record for such a far-reaching conclusion.

Ives, 456 U.S. at 856, n.17. The District Court's discussion of Bolar's alleged intent is irrelevant to the criteria which must be examined to find contributory liability under the *Ives* test. The *Ives* standard requires a showing that a drug (cont.)

II.
A WRIT OF CERTIORARI SHOULD ISSUE TO REAFFIRM THIS COURT'S FINDING THAT COPYING OF DRUG CAPSULE COLOR DOES NOT CONSTITUTE COPYING OF A "NON-FUNCTIONAL" FEATURE

The Third Circuit also affirmed the District's Court finding that Bolar's mere copying of capsule color, *a fortiori* caused it to be liable for the so-called tort of "unprivileged imitation" under New Jersey state law and supported a ban against color copying for prescription drugs.[5] *But cf., Sony Corporation v. Universal City Studios*, 52 U.S.L.W. at 4095, n.19.

The finding of "unprivileged imitation" was premised upon the erroneous conclusion of non-functionality for capsule color. Bolar, in good faith, was surely entitled to rely on the overwhelming body of scientific information which demonstrates functionality of color, as recognized by this Court in *Ives* [6], even if the Third Circuit and the District Court of New Jersey were not persuaded thereby.

(cont.)

manufacturer intentionally *induced* another to commit unfair trade practices by reason of some act other than the manufacture of a pharmaceutical product in the same color. Moreover, after this Court's recent decision in *Sony Corporation of America v. Universal City Studios, supra*, it is beyond peradventure that the mere fact that a generic drug product looks like its brand-name equivalent cannot serve as the basis for a finding of contributory liability under federal or state law. This Court's restatement of the *Ives* standard in *Sony* underscores the rule of law that color alone is not enough to constitute a violation of trademark law or unfair competition under the theory of contributory liability. See *Sony*, 52 U.S.L.W. at 4095 n.19

[5]As applied by the District Court in the instant case and affirmed by the Third Circuit, the elements of the tort of unprivileged imitation under state law are generally expressed as conjunctive requirements of non-functionality and secondary meaning. *Ciba-Geigy v. Bolar*, 547 F.Supp. at 1110.

[6]In *Ives*, this Court pointed out: "By establishing to the District Court's satisfaction that uniform capsule colors served a functional purpose, the petitioners offered a legitimate reason for producing an imitative product." 456 U.S. at 857 at n.20. This Court characterized the evidence which satisfied the *Ives* District Court as follows:

> In reaching its conclusion, the court found that the ... colors were functional to patients as well as to doctors and hospitals: many elderly patients associate color with therapeutic effect; some patients commingle medications in a container and rely on color (cont.)

The essence of the analysis by the Third Circuit and the District Court of New Jersey with respect to "unprivileged imitation" appears to be that copying is a practice which should be condemned. This is a philosophical view of economics which contravenes almost one hundred years of controlling precedent. *See Coats v. Merrick Thread Co.*, 149 U.S. 562, 573-574 (1893); *A. Leschen & Sons Rope Co. v. Broderick & Bascom Rope Co.*, 201 U.S. 166, 171 (1906); *Jos. Schlitz Brewing Co. v. Houston Ice & Brewing Co.*, 250 U.S. 28, 29-30 (1919).

This Court, however, has reiterated that free and open competition necessarily requires that "imitation" be encouraged and that the right to copy, absent legitimate patent, trademark or copyright protection, cannot be constricted:

> Sharing in the goodwill of an article unprotected by patent or trademark is the exercise of a right possessed by all – and in the free exercise of which the consuming public is deeply interested.

Kellogg Co. v. National Biscuit Co., 305 U.S. 111, 122 (1938). *See also Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. at 230-233; *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. at 238.

Indeed, in *Sears/Compco* this Court recognized that the states were barred by the constitutional doctrine of preemption from prohibiting the type of copying presently enjoined by the Third Circuit under New Jersey law:

> That an article copied from an unpatented article could be made in some other way, that the design is 'nonfunctional' and not essential to the use of either

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(cont.)

> to differentiate one from another; colors are of some, if limited, help in identifying drugs in emergency situations; and use of the same color for brand-name drugs and their generic equivalents helps avoid confusion on the part of those responsible for dispensing drugs.

456 U.S. at 853.

Justice White also noted that the finding of functionality was supported in several respects: "Patient anxiety and confusion were likely if accustomed medicine were dispensed in a different color; capsule colors assist patients in identifying the correct pill to take; standard colors help physicians identify the drug involved in case of overdose." 456 U.S. at 862 (White, J. concurring).

> article, that the configuration of the article copied may have a 'secondary meaning' which identifies the maker to the trade, or that there may be 'confusion' among purchasers as to which article is which or as to who is the maker, may be relevant evidence in applying a State's law requiring such precautions as labeling; however, and regardless of the copier's motives, *neither these facts nor any others can furnish a basis for imposing liability for or prohibiting the actual acts of copying and selling.*

Compco, 376 U.S. at 238 (emphasis added).

The lower courts also seemed perturbed by the fact that Bolar (and other generic manufacturers) seek to derive a financial gain from the copying of capsule color. The profit motive, however, is the essence of competition in a free society and should be encouraged rather than denigrated. The functionality of capsule colors makes it imperative for generic companies to copy drug color because it is essential to fully effective competition.

It is most striking to contrast the opinion of the District Court of New Jersey in the instant case and the concurring opinion of Mr. Justice White concerning functionality of capsule color for medicines:

DISTRICT OF NEW JERSEY:

> Nor was there any medical, pharmaceutical or manufacturing reason which compelled Bolar to copy the dosage form or color combinations from Ciba-Geigy."

547 F.Supp at 1111.

> To suggest that the very same colors must be used is to defy common sense.

Id.

> It is inconceivable that a physician or a pharmacist would prescribe a drug based upon its appearance only. Such appearance may be utilized as a secondary

> or incidental means of identification, but such use hardly rises to the level of functionality which would mandate or permit copying.

Id.

MR. JUSTICE WHITE:

> 'The reality is that for every link in the distributive chain (from producer to ultimate consumer) the color and shape of drugs dispensed by prescription do perform a function. For each of them, color or shape may be a convenient shorthand code by which to identify the drug and its milligram dosage so that mistakes can be avoided in the interests of pharmaceutical precaution and patient safety. For the patient-user, of course, the constancy of color and shape may be as psychologically reassuring and there fore as medically beneficial as the drug itself; in addition, they also serve to identify the drug for its ingestion. . .
>
> *[I]f the generic producer is constrained by §43(a), trademark law, or the law of unfair competition to adopt a substantially different color. . . the therapeutic value of his generic drug might be seriously impaired and confusion at the pharmacist level could be compounded beyond redemption.* 3 R. Callmann, Unfair Competition, Trademarks and Monopolies §82.1(m), pp. 217, 213 (Supp. 1981).'

Ives, 456 U.S. 862, n.3 (White, J., concurring) (emphasis added).

> A functional characteristic is 'an important ingredient in the commercial success of the product,' 601 F.2d at 643, and, after expiration of a patent, it is no more the property of the originator than the product itself. It makes no more sense to base contributory infringement upon the copying of functional colors than on the petitioners' decision to use the same formulation of the drug, or even to market the generic substitute in the first place. To be sure, the very existence of

> generic drugs 'facilitates' illegal substitution, but Ives no longer has a patent for cyclandelate, 'and the defendants have a right to reproduce it as nearly as they can.' *Saxlehner v. Wagner*, 216 U.S. 375, 380, 54 L.Ed. 525, 30 S.Ct. 298 (1910) (Holmes, J.). Reproduction of a functional attribute is legitimate competitive activity.

Id., at 863 (White, J., concurring).

If the Third Circuit's reasoning was correct, Coca-Cola should be entitled to a monopoly on its brown colored soda under either the so-called state law tort of unprivileged imitation or passing off because (a) the brown color is unnecessary or non-functional for manufacturing purposes since any color can be added to soda and still allow it to taste like cola; (b) the companies who entered the cola market after Coca-Cola are copying Coke's brown color for their own use and thereby deriving an economic benefit, and (c) the potential of illegal color substitution of other Cola drinks for Coca-Cola is great and could be reasonably anticipated by these newer manufacturers.[7] However, until Congress determines that the trademark or patent laws need to be amended to allow companies such as Coca-Cola and Ciba-Geigy to maintain monopolies over color, the refusal to permit such relief as established in *Coca-Cola v. The Koke Company of America*, 254 U.S. 143 (1920); *Coca-Cola Co. v. Snow Crest Beverages*, *supra*, and *Ives* must stand.

NAPM respectfully urges that this Court reverse the absolute protectionist view taken by the Third Circuit and the District of New Jersey.[8]

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[7]Surely, the potential for illegal acts is not greater among pharmicists than among bartenders and restaurateurs, who were found to have no such propensity in *Snow Crest*.

[8]One legal commentator's observation before *Ives* about the decisions rendered by the Third Circuit and the District of New Jersey on the questions presented to this Court appears to still be applicable:

> Perhaps one's expectations must necessarily be limited, but the level of analysis in the recent colour get-up judgments has fallen (cont.)

CONCLUSION

It is respectfully submitted that a writ of certiorari be issued to the United State Court of Appeals for the Third Circuit as prayed for.

Respectfully submitted,

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(cont.)

extraordinarily low. The courts seem to be indulging in non-sequiturs, fits of pique, and bizarre overreactions, instead of making measured, rational, dispassionate responses to whatever problems there are in resolving these business conflicts. Moreover, the distribution of what seems to be error and mistake is now quite unrandom; there had been a definite tilt in favour of the brand name drug companies, against the generic sellers. One would not think this to be one of the great political issues of the times; that distorts perception and judicial impartiality. Yet the courts seem to be reacting to generic sellers as if they were trying to subvert Government. Why the courts are doing so seems inexplicable in terms of ordinary common law legal analysis methods based on the categories of trade mark and unfair competition law as they have been developed in regard to other products. Something may be going on in these cases that is not reflected in lines of the courts' published opinions. To predict these judgments is now simple, for the same side always wins. To understand the judgments, perhaps, use of a different discipline is required.

See R.H. Stern, "The Persantine, Librax & Elavil Decisions: Colourful Brands of Drugs", 2 EUR. INTEL. PROP. REV. 59 (1981).

ADDENDUM

No. 83-1163

IN THE

Supreme Court of the United States

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BOLAR PHARMACEUTICAL CO., INC.,

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vs.

CIBA-GEIGY CORPORATION,

Respondent.

CONSENT TO FILE BRIEF OF AMICUS CURIAE

Pursuant to the Rules of the Supreme Court of the United States, Rule 36.1, the undersigned counsel for the parties in the above-captioned matter hereby consent to the filing of a brief by the National Association of Pharmaceutical Manufacturers as Amicus Curiae in support of the Petition for a Writ of Certiorari.

Dated: January 27, 1984

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